

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Creation of a Low Power Radio Service)	MB Docket No. 99-25
)	
)	

To: Office of the Secretary
Attention: The Commission

COMMENTS OF CATHOLIC RADIO ASSOCIATION

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SUMMARY

The Commission, in its *Fourth Further NPRM*, has proposed, in part, as follows:

- (1) to increase the potential maximum authorized power for low power radio licensees operating in rural areas;
- (2) to loosen in some key respects, *e.g.* eliminating -- at least for some applicants -- certain prohibitions on cross ownership and multiple ownership; and
- (3) to alter the weight afforded to an applicant's tenure as an established local entity, as well as the weight afforded an applicant's pledge to air a minimum amount of locally originating programming, in the comparative evaluations with respect to mutually exclusive applications.

We herein comment on these and other proposals of the Commission, emphasizing in particular the following:

- (a) the manifest benefits of authorizing certain low-power radio licensees to operate 250 Watt facilities,
- (b) the need to make the proposed changes in eligibility requirements more broadly available in the form of comparative criteria rather than targeting favored political groups for eligibility preferences, and
- (c) the policy and efficiency advantages of establishing multiple new comparative criteria, and in allowing for the cumulative weight of certain criteria to be afforded

compelling value, to decrease the substantial risk of increased administrative burden on the agency, prolonged delays in the introduction of service, and a widespread reliance on time-sharing arrangements between applicants with incompatible formats that confuse and alienate the potential audience that any single license might otherwise build.

In particular, we caution the commission to avoid making the perfect the enemy of the good. All that can be done in order to facilitate the rapid deployment of additional, economically sustainable low power facilities should, in fact, be done; however, some of the agency's proposed changes in eligibility requirements and comparative criteria would have unintended consequences, *i.e.*, the provocation of litigation, and in reality would serve to advance the agency's objectives no better than might the modifications we suggest. While inviting litigation would only serve needlessly to delay -- or to prevent altogether -- the introduction of new service, the modifications we propose should actually facilitate a more rapid processing of applications with less burden on the agency's resources and a correspondingly rapid rate of delivering new low power service to populations hungry for more choices. Accordingly, several of the ideas on which the Commission has sought comment, if modified as we propose, should foster the vibrant low power radio service that the agency so rightly desires.

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Revision of Service and Eligibility Rules for)	MB Docket No. 99-25
Low Power FM Stations)	
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COMMENTS OF THE CATHOLIC RADIO ASSOCIATION

I. INTRODUCTION

The Catholic Radio Association (“CRA”), by counsel, hereby submits its Comments in response to the *Fourth Further Notice of Proposed Rulemaking in the Matter of Creation of a Low Power Radio Service*¹ (the “*Fourth Further Notice*”) in which the Commission seeks to comment on proposals to implement certain provisions of the Local Community Radio Act of 2010 (“*LCRA*”). The Commission has set forth several promising proposals, yet some of the key revisions to current policies would almost certainly have unintended consequences to the detriment of the twin goals of introducing more widespread availability of economically sustainable low power facilities while simultaneously anchoring the LPFM service to the local communities being served. We herein emphasize critical improvements to the current proposals under consideration by

¹ *Fourth Further Notice*, MB Docket No. 99-25, Report on Notice of Proposed Rulemaking, FCC 12-28 (2012)..... [Pursuant to the Commission’s request that comments on the Staffing Proposal (defined below) as it pertains to radio be filed in the *Digital Audio NPRM*, CRA is filing a copy of these Comments in that proceeding, as well. *Localism NPRM* at ¶¶28-29, citing *Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Broadcast Service*, Second Report and Order, First Order on Reconsideration and Second Further Notice of Proposed Rulemaking, MB Docket No. 99-325, 22 FCC Rcd 10344, 10391 ¶119 (2007) (hereinafter “*Digital Audio NPRM*”).]

the Commission. If and when these measures are adopted, the LPFM service will have a much better opportunity not only to survive, but to thrive, consistent with the Commission's desires to see small noncommercial stations that are responsive to the needs of their local communities.

II. BACKGROUND

CRA serves as the trade association for radio station licensees who provide Catholic programming in their local communities. Working on behalf of official Church institutions, as well as ministries founded and operated by lay members, CRA supports the efforts of Catholic radio programming producers, distributors, and broadcasters alike. Association members include not only broadcast licensees but also program providers, the U.S. Conference of Catholic Bishops, and several Archdioceses. A 13 member Episcopal Advisory Board supports CRA's efforts to operate in a manner true to the inherited body of authoritative Catholic teachings.

Just a few years ago, very few radio stations offered substantial amounts of Catholic programming. Today, roughly 130 members of CRA now operate in communities across America. The phenomenal growth of Catholic radio reflects an enthusiastic response to the 1997 observation of Pope John Paul the Great that "Radio offers perhaps the closest equivalent to what Jesus was able to do with large groups through his preaching."

Hundreds of additional CRA members (and potential members) participated in the October 2007 filing window for those seeking permits to build new noncommercial educational ("NCE") FM stations. In urban markets where congested spectrum bars the authorization of new radio stations, or in rural markets where a full power facility may

prove uneconomical to build and operate, the LPFM service offers tremendous opportunities to nonprofit educational organizations seeking to broadcast in a Catholic talk format that is currently unavailable in many communities.

III. COMMENTS

1. CLASSES OF SERVICE

As CRA did in its Comments submitted June 10, 2011, we continue to favor elimination of the LP10 class of service and the addition of a LP250 class of service, at least in smaller communities, rural areas or “non-core” locations in larger markets to increase power levels to a maximum ERP of 250 watts at 30 meters. The increased power levels promise to offset certain disadvantages in the LPFM service, *e.g.*, limited potential audiences, and thereby to promote LPFM station viability and expansion of radio services to areas where full service and/or commercial operations may not be economically feasible. The introduction of additional and economically sustainable noncommercial educational service would manifestly better serve the needs of the local communities whose support would prove a prerequisite to continued economic viability.

Allowing applicants to provide technical exhibits demonstrating that such power levels would not interfere with existing full power facilities should not prove problematic. Applicants for new full power FM facilities already supply such exhibits, and as discussed elsewhere herein, the Commission has already – and rightly -- contemplated allowing applicants to demonstrate that no actual prohibited interference would be posed by a proposed new LPFM facility.

The Commission suggests one possibility is to allow increased power levels anywhere outside the top 100 markets, while another possibility is to disallow any 250

Watt facilities anywhere in the top 50 markets. The former, we submit, is the very least that should be done, while the latter proposal would be unnecessarily restrictive. Even the possibility of introducing a sliding scale of permissiveness depending on proximity to a city center would constitute an unnecessarily “one size fits all” prohibition. The mere fact that licensing opportunities are “more likely to be limited because of spectrum constraints” in larger markets and in proximity to city centers is, in fact, an argument against all low power facilities. That spectrum licensing opportunities are limited in urban areas due to spectrum congestion, and in rural areas due to uneconomical costs relative to support, are the reasons the LPFM service was envisioned. The great benefit of the service is to allow the introduction of services where new full power operations are difficult if not impossible, but where the introduction of a low power facility – while challenging – is at least plausible. The Commission should begin with an openness to the possibility that an applicant might be able to demonstrate no actual interference will be caused, and where the burden of making those demonstrations can be born by the applicant, the benefits of a possible new service manifestly outweigh the need to build flexibility into the rules regarding where higher power facilities may be authorized.

CRA urges that current LPFM licensees be given a “first bite at the apple” with respect to the ability to file applications to modify to 250 Watt authorizations. This would not only prove equitable with respect to pioneers in the service, but it would also afford the opportunity for facilities with borderline economic sustainability at present to strengthen their prospects for survival. After all, the enthusiasm for a wave of construction of 250 Watt facilities by new licensees will be dampened if -- alongside the

construction of these new facilities -- the previous generation of LPFM licensees experienced a wave of failures that might have been prevented.

Technically, all introduction of new service poses some possibility of interference, but of course the question is whether such interference is substantial enough for the signal listen-ability to suffer appreciably. We therefore urge the Commission to retain as much discretion as it holds within the parameters that Congress have established, without needlessly ceding such discretion as it has retained with respect to interference concerns in the context of other broadcast services. For example, the Commission has allowed full power licensees to accept certain levels of interference posed to a licensee provided the licensee does not cause unacceptable interference to other licensees. The so-called Raleigh Waiver would not, strictly speaking, constitute a regime wherein all co-, first-, and second-adjacent channel spacing requirements are satisfied fully. Rather, it is by definition an exercise of discretion by the FCC. To the extent such discretion can be exercised in the low power FM service at the time an application for a new facility is submitted, and not only after a fully spaced facility has been authorized, such an approach would prove consistent with the aggressiveness with which the Commission has moved forward in creation a low power service that affords prospective listening audiences with numerous new formats from which to choose.

We therefore urge the Commission to move aggressively to allow the higher-powered facilities anywhere that such facilities can be shown to pose no actual interference. In a worst-case scenario, an overly cautious approach might simply restrict the 250 Watt facilities to areas outside the top 100 markets. But such an approach, while better than authorizing none at all, would needlessly delay the introduction of more

economically sustainable facilities in many locations where listening audiences could exist and where it can be demonstrated that no actual interference is threatened. The application process should only rely on such bright-line tests where the administrative efficiencies clearly outweigh the benefits of introducing new service in additional areas. By placing the onus of demonstrating with technical exhibits that no actual interference will be posed – or better still that any interference will be de minimus, the agency can facilitate more widespread deployment of LPFM facilities with minimal burden on the staff.

Because of the potential for undue delay of a LPFM filing window and the inherent limitations on the 10 Watt service, we also support simply eliminating that class of LPFM facility.

2. REMOVAL OF I.F. CHANNEL MINIMUM DISTANCE SEPARATION REQUIREMENTS

CRA appreciates the Commission's recognition of a disparity between the requirement that LPFM licensees operating at less than 100 Watts protect full power stations on their intermediate frequencies while this requirement does not apply to FM translators. We support the agency's proposal to eliminate this disparity by placing the LPFM facilities on equal footing with translators.

3. ELIGIBILITY OF OWNERSHIP

A. REQUIREMENT THAT APPLICANT BE COMMUNITY-BASED

The *Fourth Further NPRM* proposed certain language to clarify the Commission's intention that licensees retain local community-based eligibility on an ongoing basis and not merely at the application stage. As a preliminary matter, CRA continues to see no inherent connection between community-based eligibility and

responsiveness of a format to local concerns. Rather, no LPFM station that is not responsive to local concerns is going to be able to survive for long because it will not build and retain an audience.

We therefore urge the Commission as an initial matter never to make the perfect the enemy of the good. The introduction of threshold eligibility requirements that might prevent any new service at all in some areas should be limited only to policy areas where the eligibility requirement is truly a necessary – without exception – to any conclusion that the proposed new service could in fact prove responsive to local community concerns. Even if we accept *arguendo* that local organizations are more likely than distant organizations to prove responsive to local concerns, this is not to conclude therefore that distant organizations may never prove responsive to local concerns. Since it is better to allow for the possibility that some distant owned station that is responsive to local concerns would be better than no new station at all, imposing a local eligibility requirement as a threshold issue – instead of simply affording it greater emphasis in the comparative evaluation of mutually exclusive applications, is in our view a mistake.

All that duly noted, we recognize the unfortunate possibility that with respect to this particular policy question, the “ship may have sailed”. If so, we urge the Commission at least to limit the damage. The proposed language arguably fails to achieve the Commission’s objectives with the clarity it seeks. Instead of stating that “Only local applicants will be permitted to submit applications, the Commission would seem to want to put it this way: “Only local entities may be authorized to build and operate a LPFM facility.” Again, we emphasize that such a rule is

unnecessarily restrictive and at odds with the overall intention of the Commission in establishing a low power FM service that will expand as much as reasonably practical the introduction of new service. Such expansion can be done in a manner that favors local applicants substantially without precluding altogether the possibility that a more distant entity would introduce service that is responsive to local concerns.

B. ELIGIBILITY OF NATIVE NATIONS

The case of whether to modify the LPFM point system to award a point to a Native Nation proposing LPFM service to its community is illustrative of the point discussed in the preceding paragraph. Specifically, it is possible to favor a certain characteristic without making that characteristic a threshold eligibility item that eliminates any applicants that fail the test. The Commission has rightly decided against restricting the entire LPFM service only to tribal entities. It should likewise use comparative criteria, and not threshold eligibility criteria, as the methodology for achieving its policy objectives.

C. CROSS-OWNERSHIP

And yet, the very fact that the Commission is considering opening the door to cross ownership of full power and LPFM facilities, or of an LPFM facility and a full power station, is tremendously positive. We urge the Commission against limiting the elimination of these unnecessary threshold eligibility restrictions only with respect to tribal entities. Instead, these restrictions should be loosened for all applicants. In their place, the Commission's desire to favor applicants that do not hold other broadcast authorizations, or that pledge to continue to hold no other

authorizations, can provide yet another comparative criterion on which to evaluate mutually exclusive applications. And if not included in the comparative criteria per se, these considerations could provide a round of tie-breaking to help prevent scenarios in which time-sharing – always an impediment to the economic sustainability of a station -- is the likely outcome.

For reasons already discussed above, we do not view cross ownership as an inherent threat to the local responsiveness of LPFM licensees. To the extent it arguably poses a decreased likelihood of responsiveness to local concerns, favoring those that do not own other facilities in the comparative criteria or tie-breaking analysis are appropriate. But maintaining these restrictions for all applicants except for tribal entities is doubly mistaken, both because it proceeds from a false notion that only tribal governments can serve the interests of Native Americans and because it precludes the introduction of some new services in locations where no applicant with the threshold eligibility characteristic, e.g., no applicant that owns no other broadcast authorizations, apply for permits to bring service to a particular community.

D. MULTIPLE OWNERSHIP

This same analysis applies equally to whether the Commission should permit tribal entities to seek more than one LPFM construction permit to ensure adequate coverage of tribal lands. The multiple ownership prohibition should be eliminated altogether and replaced with a role in determining the comparative analysis of mutually exclusive applications.

4. SELECTION AMONG MUTUALLY EXCLUSIVE APPLICANTS
A. POINT SYSTEM
(1) ESTABLISHED COMMUNITY PRESENCE

At last, we arrive at a discussion properly framed in the context not of which entities will be precluded altogether from offering new service, but which applications will be favored in mutually exclusive scenarios. Specifically, the Commission solicits input as to whether it should award points – and if so, how many – to an applicant that has maintained such an established community presence for a longer period of time, such as four years. We do not believe that a standard of two years should suddenly be worth nothing at all inasmuch as the full power NCE FM process continues to recognize a value to a two year established local presence. Moreover, as a matter of first principles, it remains highly arguable whether the mere fact that an entity is established and local – regardless how many years defines that term – necessarily results in that organization proving more responsive to local concerns. The ultimate test on that score is whether a station can build and sustain an audience. However, to the extent the Commission has a long-established preference for favoring local entities, it would be consistent with that mindset to afford greater favor to a longer-established entity.

One note of caution, however: merely giving greater credit to an older institution would quite likely produce disparate results from an equal protection perspective. A local chapter of the NAACP likely will not be as old as the Masons, after all, but we strongly suspect the Commission does not seek an outcome in which an old boys network of very old institutions might trump every competing application by an organization founded during the era of civil rights advocacy.

Likewise, Catholic applicants would not favor a scenario in which competing Anglican applications were always viewed as superior simply because they are older. It would seem there should be a limit, then, on the additional advantage that mere age should yield. Whether that limit should be set at two years or four is arguably not so important as the continued fact that a two-year presence should yield an advantage over those with virtually no history at all.

For the reasons provided by the Commission in its *Fourth Further NPRM*, we favor the extension in rural areas of the established community presence status to those groups located within 20 miles of their transmission site.

With respect to whether to local organizations filing as consortia should be able to aggregate their established local presence points, we favor the ability of consortia to be able to aggregate all comparative criteria points whatsoever. Any ability of applicants to resolve mutually exclusive scenarios without resort to mandatory time-sharing among drastically different proposed programming formats is going to foster sustainability of the operations of the LPFM facility by facilitating the building and sustaining of an audience. That it will do so without imposing tremendous administrative burdens on the agency staff, such as those burdens associated with administrative litigation, is even more to the credit of aggregating the points of consortia members. CRA views point aggregation as a major incentive for consortia development and other means of resolving mutually exclusive applications without recourse to forced time-sharing by starkly different applicants whose proposed programming formats are simply incompatible and likely to confuse potential audiences of any one possible format.

(II) LOCAL PROGRAM ORIGINATION

With respect to the Commission's desire to emphasize local origination and to afford it greater preference in its comparative criteria, we again note that it does not necessarily follow that programming with local origination is more responsive than programming originating elsewhere. We are extremely skeptical that this is often, much less always, the case. Thus, affording greater preference to this characteristic strikes CRA as more dubious than we view a preference for longer established community presence. However, as discussed above, to the extent the Commission makes this issue a matter for emphasis in mutually exclusive scenarios and not a basic eligibility threshold for holding a LPFM license, we at least are comforted in the knowledge that singleton applications in some areas could result in new service even if a local origination pledge was not set forth in the application.

(III) ADDITIONAL SELECTION CRITERIA

As noted above, mandatory time-sharing is an inherently unstable outcome and should be avoided if possible. To the extent the Commission can turn more of its basic eligibility thresholds into comparative criteria and tiebreaking points of analysis, we strongly urge the Commission to do so.

B. FIRST TIEBREAKER, VOLUNTARY TIME SHARING

With respect to the surrender or expiration of a construction permit – or the surrender of a license issued to those participating in a voluntary time-sharing arrangement, we urge the Commission to facilitate the emergence of strong LPFM station identities by allowing the existing time share participants to reach voluntary arrangements for how best to apportion the time that they “inherit”. In fact, as

discussed below, the Commission should allow for post time-sharing arrangement settlement agreements whereby withdrawing applicants can be reimbursed for their reasonable and prudent expenses. Time sharing stations are simply not an attractive outcome for audiences or for licensees, and to the extent alternatives can be found expeditiously by voluntary agreements, this ought to be encouraged enthusiastically.

5. OPERATING SCHEDULE, TIME SHARING

With respect to whether the Commission should extend to LPFM stations the mandatory time-sharing minimum operating hour requirements currently in place for full-service NCE FM stations, we urge the Commission to reject this impulse. The LPFM service licensees, especially those subjected to time-sharing arrangements, need as much flexibility as they can get in order to build and maintain audiences. Moreover, the current Rules do not provide for certain failed settlement situations where a single applicant prevents all other mutually exclusive applicants from reaching a voluntary and universal solution to the mutually exclusive scenario. In such circumstances, one or more of the time-sharing applicants may actually wish to yield all its/their time to another applicant, provided the time-yielding applicants could be compensated for the reasonable and prudent costs it/they incurred in the application process. We submit that in such scenarios the agency should allow a universal settlement among applicants designated for time-sharing even if a broader pool of applicants were unable to conclude a universal settlement due to the presence of one or two uncompetitive, but obstinate, applicants in a mutually exclusive group.

IV. CONCLUSION

In view of the foregoing, we urge the Commission to allow widespread deployment of 250 Watt LPFM facilities and to replace restrictions on the eligibility of applicants for LPFM licenses with comparative criteria and enhanced possibilities for voluntary resolution of mutually exclusive application groups.

Respectfully submitted,

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